

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER 98-0420 ST
SALES AND USE TAX

For Tax Periods: 1995 Through 1997

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

ISSUES

1. Sales and Use Tax-Barrel Pump

Authority: IC 6-2.5-3-2(a), *Gross Income Tax Division v. National Bank and Trust Co.*, (1948) 226 Ind. 298, 79 N.E. 2d 651, *Income Tax Division v. National Bank and Trust Co.*, (1948) 226 Ind. 298, 79 N.E. 2d 651, IC 6-2.5-5-3, *Indiana Department of Revenue v. Cave Stone* (1983), *Ind. 457 N.E. 2d 520*, 45 IAC 2.2-5-10 (c).

Taxpayer protests the imposition of tax on a barrel pump.

2. Sales and Use Tax-Labels

Authority: IC 6-2.5-5-3.

Taxpayer protests the imposition of tax on certain labels.

3. Sales and Use Tax-Die Staging Crane

Authority: IC 6-2.5-5-3, 45 IAC 2.2-5-10 (h) (1).

Taxpayer protests the imposition of tax on a die staging crane.

4. Tax Administration-Negligence Penalty

Authority: 45 IAC 2.2-5-10 (h) (1).

Taxpayer protests the imposition of the negligence penalty.

STATEMENT OF FACTS

Taxpayer is a manufacturer of various auto parts and auto components. After an audit, Taxpayer was assessed additional sales and use tax. Taxpayer timely protested the assessment. Further facts will be provided as necessary.

1. Sales and Use Tax: Barrel Pump

Discussion

Pursuant to IC 6-2.5-3-2(a), Indiana imposes an excise tax on tangible personal property stored, used, or consumed in Indiana. A number of exemptions are available from use tax, including those collectively referred to as the manufacturing exemptions. All exemptions must be strictly construed against the party claiming the exemption. *Gross Income Tax Division v. National Bank and Trust Co.*, (1948) 226 Ind. 298, 79 N.E. 2d 651. IC 6-2.5-5-3 provides for the exemption of “manufacturing machinery, tools and equipment which is to be directly used by the purchaser in the direct production, manufacture, fabrication . . . of tangible personal property.” In *Indiana Department of Revenue v. Cave Stone* (1983), *Ind. 457 N.E. 2d 520*, the Indiana Supreme Court found that a piece of equipment qualifies for the manufacturing exemption if it is essential and integral to the production process. 45 IAC 2.2-5-10 (c) further describes manufacturing machinery and tools as exempt if they have an immediate effect on the property in production.

Taxpayer’s first point of protest concerns the imposition of use tax on a barrel pump that Taxpayer contends qualifies for the manufacturing exemption. During the production process, this pump automatically shoots oil directly onto the steel that is being molded in Taxpayer’s facility. The oil has an immediate effect on the steel by keeping it pliable during the production process. If the steel were not kept pliable, the steel would not move properly through the production process. Clearly the barrel pump is an essential and integral part of the production process and qualifies for the manufacturing exemption.

Finding

Taxpayer’s protest to the imposition of use tax

2. Sales and Use Tax: Labels

Discussion

Taxpayer’s second point of protest concerns the imposition of use tax on certain labels. These labels keep track of the parts. They include information such as job numbers, tracking numbers and the number of pieces. They are used internally to use in moving product from one operation to another. These labels do not stay with the products when the products are shipped to the customers.

Taxpayer contends that these labels are directly used in the direct production of its product and therefore qualify for the manufacturing exemption pursuant to IC 6-2.5-5-3. These labels provide inventory control for Taxpayer in management of its production process. They are not essential and integral to Taxpayer’s production process.

Finding

Taxpayer's protest to the imposition of use tax on labels is denied.

3. Sales and Use Tax: Die Staging Crane

Discussion

Taxpayer's third point of protest concerns the imposition of use tax on a die staging crane. Taxpayer contends that this piece of equipment qualifies for the manufacturing exemption pursuant to IC 6-2.5-5-3. This piece of equipment pulls dies from the production line, moves the dies to another area for retooling and maintenance and returns the dies to the production line. Although the retooling and maintenance is necessary to manufacture products to the customers' specifications, it is still maintenance. Pursuant to 45 IAC 2.2-5-10 (h) (1) equipment used to maintain production equipment is not entitled to the manufacturing exemption from sales and use tax.

Finding

Taxpayer's protest to the imposition of use tax on the die staging crane is denied.

Tax Administration: Negligence Penalty

Discussion

Taxpayer's final point of protest concerns the imposition of the ten per cent negligence penalty. Indiana Regulation 45 IAC 15-11-2 (b) states,

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Taxpayer has been audited on similar issues in the past and continued to failure to accrue use tax on all the taxable items. This failure to set up an accurate tax accrual system constitutes negligence.

Finding

Taxpayer's protest to the imposition of the negligence penalty is denied.